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March 21, 2025

Liane M. Randolph
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: CMTA Feedback – CARB's Solicitation to Inform Implementation of SB 253 (Wiener, 2023), SB 261 (Stern, 2023) & SB 219 (Wiener, 2024)

Dear Chair Randolph:

On behalf of the California Manufacturers & Technology Association ("CMTA"), I appreciate your consideration of the following comments in in response to the California Air Resources Board's ("CARB") information solicitation (the "Solicitation") to inform the implementation of California's climate disclosure legislation, SB 253 (Wiener, 2023) and SB 261 (Stern, 2023), as amended by SB 219 (Wiener, 2024).

CMTA is a trade association dedicated to supporting and enhancing a strong business climate for California's 30,000 manufacturing, processing, and technology-based companies. In this context, we believe that our membership is well-positioned to provide constructive feedback to CARB with respect to the climate-related disclosures required by SB 253 and SB 261.

<u>Introduction</u>

Since 1918, CMTA has held a strong track record of working with California State government to develop balanced laws, effective regulations and sound public policies to stimulate economic growth and create new jobs while safeguarding the state's environmental resources. CMTA and its 400-member companies generate more than $300 billion every year and employ more than 1.3 million Californians.

CMTA and its members urge CARB to establish via regulation a practical disclosure framework that safeguards California's market competitiveness and economic development by establishing a balanced and sensible approach to compliance of SB 253 and SB 261, including:

- Minimizing the costs of preparation, implementation and compliance with SB 253 and SB 261;
- Reducing the risk of litigation and other legal risks for companies that are forced to comply with subjective and less precise calculations of environmental metrics; and
- Allowing the use of existing regulatory frameworks and disclosures to comply with SB 253 and SB 261.

With the spirit of constructive engagement, CMTA is participating in this solicitation to provide suggestions, alert CARB of issues that could negatively impact California's market competitiveness, and support CARB in issuing more practical, predictable and cost-effective rules to implement SB 253 and SB 261.

Overview

Overarching all of our comments and recommendations, CMTA believes it critical that CARB's rulemaking promote practical, and cost-effective compliance. Unfortunately, the language of SB 253 and SB 261 lacks clarity and is open-ended in a number of respects, which is creating significant uncertainty for companies. To this end, we appreciate CARB taking a measured approach to seek additional feedback from stakeholders to help guide the development of practical guidance for the compliance of these bills that could otherwise create heightened legal risk for companies.

Further, the reporting timeline set by CARB should consider timing for required climate-related data collection, analysis, and assurance under other state and federal regulatory frameworks such as the Cap-and-Trade Program and the United States Environmental Protection Agency's ("EPA") 40 CFR Part 98. To this end, companies should use the most accurate calculation approach available to them and that is appropriate and material for their reporting context. Many larger companies – over 30 just within the CMTA membership – are already providing such climate related data via these other regulatory frameworks. However, for most small to medium-sized companies and for many larger companies without manufacturing facilities, climate-related data could be immaterial, irrelevant and even duplicative because their customers are already covered under and reporting the climate-related data through already existing regulatory frameworks.

All in all, companies should be empowered to minimize the cost of implementation by avoiding duplicative reporting obligations and allowing the use of existing regulatory frameworks required by CARB and other environmental agencies to count towards reporting compliance.

Additionally, CMTA and its members believe is important that regulatory disclosure on climate-related information, including greenhouse gas ("GHG") emissions, requires substantial time and costs for companies to prepare and implement. As you can surely understand, compliance with new climate-reporting regulation requires the development of new systems, processes, and controls; the hiring of additional internal staff with particular set of skills and engagement of outside consultants in high demand; and time, resources and processes associated with the assurance requirements. In this regard, for a company – any size, but especially small, medium and private companies – preparing these disclosures for the first time, the costs of implementation could be significantly high. Additionally, the collection, analysis, disclosure and assurance of GHG emissions data, which are subject to significant inherent challenges, require companies to spend substantial time and economic resources. Notably, even for a company that is already collecting and disclosing climate-related information on a voluntary basis or under a different regulatory regime, compliance with this regulation may be more expensive and time consuming because of the threat of incurring costly fines.

CMTA and its members appreciate the thoughtful and detailed questions posed to stakeholders and respectfully offer the following feedback that is focused specifically on manufacturers and their manufacturing operations in the state.

General: Applicability

Question 1.a. Should CARB adopt the interpretation of "doing business in California" found in the Revenue & Tax Code section 23101?

While we appreciate the interest in consistency across current definitions in statute, CMTA is concerned the Revenue & Tax Code interpretation of "doing business in California" does not align with the scope of jurisdiction of CARB nor is it indicative of whether an entity has emissions that would impact Californians. Instead, CARB should focus the definition on those entities that have a physical manufacturing presence in California and to entities with actual operations in the state that may emit greenhouse gasses and are already subject to reporting. Further, CMTA urges CARB to consider exemptions for entities and activities that are limited to transit through or not directly related to manufacturing operations in the state as well as entities with employees that reside in the state but who do not have direct ties to manufacturing activities within the state that may result in emissions impacts.

Question 1.c. Should SB 253 and 261 cover entities that are owned in part or wholly owned by a foreign government?

CMTA does not object to including entities that are owned in part or wholly owned by a foreign government but only to the extent they meet two-part test associated with the annual revenue thresholds specified under the laws and they have actual sales and operations in California related to manufacturing. This will help to ensure a level playing field for all responsible entities across industry sectors, regardless of whether they are government-owned.

Question 2.a. For private companies, what databases or datasets should CARB rely on to identify reporting entities? What is the frequency by which these data are updated and how is it verified?

CMTA recommends CARB focuses on entities who meet the two-part test noted above and who are already subject to greenhouse gas reporting requirements, Title V operating permits, and have manufacturing operations in California. And while entities such as S&P Global, Bloomberg, and others maintain financial data on private and public companies, we are not aware of a source that that could identify all entities subject to reporting requirements.

<u>Question 2.b.</u> In what way(s) should CARB track parent/subsidiary relationships to assure companies doing business in California that report under a parent are clearly identified and included in any reporting requirements?

California should focus its efforts on entities located within the state and eliminate extraterritorial expectations for parent or other subsidiary entities with limited to no connections to the state. For companies already reporting to the state under programs such as CARB's Cap-and-Trade Program or EPA's 40 CFR Part 98, the state should allow companies to report at the same entity level and options should be provided to limit double reporting of emissions.

<u>General: Standards in Regulation</u>

<u>Question 3.a.</u> How do we ensure that CARB's regulations address California-specific needs and are also kept current and stay in alignment with standards incorporated into the statute as these external standards and protocols evolve?

CARB should not rely on other non-accountable independent organizations to establish the standards to which companies will be required to submit information. These standards are inconsistent with existing reporting requirements and will cause companies to report different information to CARB for different regulatory purposes. The regulatory burden associated with this inconsistent reporting is unnecessary, confusing, and will not result in any benefit to the citizens of California.

<u>Question 3.b.</u> How could CARB ensure reporting under the laws minimizes a duplication of effort for entities that are required to report GHG emissions or financial risk under other mandatory programs and under SB 253 or 261 reporting requirements?

CMTA urges CARB to allow emissions disclosures provided under and compliant with other regulatory emissions and climate related risk reporting frameworks to count as compliance with these reporting requirements. Entities reporting under CARB's Cap and Trade Program are reporting information that is consistent with the data and reporting associated with Scope 1 disclosures, including from energy providers who also are covered under the Program and also report data consistent with Scope 1 disclosures. The combination of both reported data sets would satisfy the requirements of both Scope 1 and Scope 2 reporting obligations for entities covered under the Cap and Trade Program. Additionally, many entities may also report data to CARB and EPA on the use of their products thereby providing the relevant data and satisfying the reporting obligations for Scope 3 as well.

Question 3.c. To the extent the standards and protocols incorporated into the statute provide flexibility in reporting methods, should reporting entities be required to pick a specific reporting method and consistently use it year-to-year?

CMTA urges CARB to allow an entity to maintain flexibility, so long as the entity clearly states in its disclosure each reporting cycle what reporting method it is using for the particular report. Since the intent of the regulations is for entities to use the most accurate calculation approach available that is appropriate for their reporting context, an entity should be allowed to switch reporting methodology as market and business conditions, industry practices, standards and global regulations evolve.

General: Data Reporting

Question 4. To inform CARB's regulatory processes, are there any public datasets that identify the costs for voluntary reporting already being submitted by companies? What factors affect the cost or anticipated cost for entities to comply with either legislation? What data should CARB rely on when assessing the fiscal impacts of either regulation?

Even for a company that is already collecting and disclosing climate-related information on a voluntary basis or under a different regulatory regime, compliance with these laws and associated regulation may be more expensive and time consuming because of the threat of incurring in costly fines. Even under the Securities and Exchange Commission's (SEC) 2022 proposed rule and 2024 final rule, the SEC estimated that large public companies were expected to incur upwards of roughly $640,000 in the first year of implementation, and around $530,000 per year in ongoing costs after the first year. The SEC analysis and findings were similar to those identified in the SustainAbility Institute's report by ERM, *Costs and Benefits of Climate-Related Disclosure Activities by Corporate Issuers and Institutional Investors.*[1] That said, some other analyses provided to the SEC at that time suggested even higher expenditures would be incurred for implementation and ongoing compliance with costs driven in large part in gathering data associated with Scope 3.

Additionally, the breadth of required greenhouse gas emissions data – if Scope 1 and 2 are not material to the entity's business but still required, or if Scope 3 and all its categories are required – may require extensive information from the entities value chain, drive up cost of business, diminish competitiveness and burden of compliance, as well as increase data unreliability.

To this end, CMTA notes the importance of reasonable and practical rules developed by CARB that can reduce the impact of implementation of these rules without compromising the accuracy of California's greenhouse gas emissions reporting under programs like the Cap and

[1] Costs and Benefits of Climate-Related Disclosure Activities by Corporate Issuers and Institutional Investors, The SustainAbility Institute by ERM, May 17, 2022.

Trade Program, which covers more than 400 major companies who represent 80% of California's greenhouse gas emissions[2]. As previously mentioned, more than 30 of these companies are CMTA members who participate in and comply with the Cap and Trade reporting obligations, which would appropriately align with the data required under this regulatory framework.

Question 5. Should the state require reporting directly to CARB or contract out to an "emissions" and/or "climate" reporting organization?

Given that this information may be sensitive and could involve confidentiality or trade secret claims, it is important that it be submitted directly and only to CARB to ensure proper handling and oversight. Third party reporting organizations often are funded by entities that may have their own interests in having access to such information and could use information that they become privy to in ways that were not the original intent of the laws, including litigation. CMTA is highly concerned about such an approach resulting in third party litigation against entities that are the economic engines of California.

Question 6. If contracting out for reporting services, are there non-profits or private companies that already provide these services?

In line with feedback in Question 5, CMTA and its members are concerned that third party, non-profit, and private companies who may have the mechanisms to provide these services will not be able to ensure and provide the level of confidentiality protection that CARB would be able to provide. Further, as mentioned, such entities may lack independence and have inherent biases, including funding from organizations who may intend to use the reported information for litigation purposes.

SB 253: Climate Corporate Data Accountability Act

Question 7. Entities must measure and report their GHG emissions in conformance with the GHG Protocol, which allows for flexibility in some areas (i.e. boundary setting, apportioning emissions in multiple ownerships, GHGs subject to reporting, reporting by sector vs business unit, or others). Are there specific aspects of scopes 1, 2, or 3 reporting that CARB should consider standardizing?

CARB should maximize entities' flexibility to disclose GHG emissions based on their circumstances, including the relevance of certain emissions to their operations, as well as their existing data capabilities. For example, consistent with the GHG Protocol[3]:

- Companies should not be forced to make disclosures that they are not yet capable of responsibly making. To this end, as it relates to small and medium sized supply chain businesses, the World Resources Institute (WRI) guidance for Scope 3 emissions

[2] FAQ Cap-and-Trade Program | California Air Resources Board
[3] https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf, pages 40-47

specifically notes "It is unlikely that all of a company's relevant suppliers will be able to provide it with GHG inventory data."[4] Low-quality disclosures not only expose companies to heightened litigation, legal and reputational risks but also do not benefit California or the broader market that would use these low-quality [unreliable] disclosures. Instead, impacts on smaller supply chain entities will have significant impact putting them in the untenable position of choosing between incurring significant costs to figure out how to compile and report such information or risk losing a valuable customer who is responsible for the broader reporting under the law.

- Entities should not be required to disclose any greenhouse gas emission categories that are not relevant (including any Scope 3 emissions), if such emissions are not financially material.

- Forcing companies, or compelling the speech of companies, to disclose the emissions of other entities upstream or downstream of their own operations is unnecessary and unlawful. Much of Scope 3 requires speculation, extensive resources to gather data, and uncertainty about how another company's data may or may not be aligned with the reporting that the reporting company selects to use to report overall emissions. The data therefore may be inaccurate, misleading and unhelpful to the overall goals of the underlying legislation.

- CMTA urges CARB to adopt a financial materiality approach aligned with GAAP standards following the accounting principle that materiality is related to the significance of information within a company's financial statements. If a transaction or business decision is significant enough to warrant reporting to investors or other users of the financial statements, that information is "material" to the business and is recorded or reported in the business's financial statements using GAAP standards. This ensures that only companies with material emissions from a financial stakeholder perspective in any scope or category would have to expend the resources to collect, measure, and verify such disclosures. If this financial materiality assessment has already being completed (including but not limited to at the State or Federal level), businesses that have not qualified for disclosure should not be made mandated to disclose under these laws. By imposing financial materiality using GAAP standards as an initial threshold, businesses with negligible exposure to emissions would not be required to spend time and money on data gathering and measurement to support a non-materiality determination.

- If emissions disclosure is financially material for the business, companies should use the most accurate calculation approach available to them that is appropriate for their reporting context.

[4] World Resources Institute (WRI, *Technical Guidance for Calculating Scope 3 Emissions* (Version 1.0). World Business Council on Sustainable Development, pg. 19.

- Companies should be allowed to use one system to capture and disclose GHG emissions. Significant cost savings are achieved by using the same system in all facilities, as compared to disparate systems. Therefore, if a company is already disclosing emissions under regulatory frameworks or climate-related risks and opportunities under regulatory or voluntary disclosures, CARB should allow for those disclosures to constitute compliance.

- Companies should have the option to "comply or explain," particularly where Scope 1, 2 and Scope 3 emissions are concerned. By allowing companies to comply with these rules by using existing regulatory disclosures and permit other companies to use the "comply or explain" approach, CARB would allow itself, in-scope companies, and the market to better understand the overall inventory of emissions in the state without duplication, unreliable calculations and defective reporting. Further, given the relationship between SB 253 and SB 261 disclosures, we would note that SB 261 indeed takes this type of approach and does so appropriately providing the opportunity for reporting entities to explain and develop a plan to close the gaps of data and information associated with the required disclosures while also maintaining compliance with the law and regulation.

Question 8.a. For entities required to report under SB 253, what options exist for third-party verification or assurance for scope 3 emissions?

Unfortunately, there are limited entities and as such CARB should consider a phase-in period of assurance. This, in particular, is one of the requirements that will unnecessarily increase the costs of compliance.

Question 8.b. For purposes of implementing SB 253, what standards should be used to define limited assurance and reasonable level of assurance? Should the existing definition for "reasonable assurance" in MRR be utilized, and if not why?

CMTA does not recommend CARB expand the requirement for "reasonable assurance" beyond sources already obligated to do so for their Scope 1 emissions subject to the state's MRR. Any additional assurance required by the statute should focus on limited assurance only.

There will be a limited number of third parties expected to have expertise in the requirements of these new laws as the regulations are currently being developed. In addition, these resources are likely already committed to conducting verifications for facilities subject to the state MRR verification requirements. As such, CMTA recommends phasing in any third-party assurance required by statute over a longer period of time. Notably, the statute provides the authority for CARB to consider the "capacity for an independent assurance engagement to be performed by a third-party assurance providers" in establishing reporting timelines that could support a phased in approach.

SB 261: Climate Related Financial Risk Disclosure

Question 10. For SB 261, if the data needed to develop each biennial report are the prior year's data, what is the appropriate timeframe within a reporting year to ensure data are available, reporting is complete, and the necessary assurance review is completed?

First, CMTA recommends CARB clarify what it means by "necessary assurance review."

Additionally, CARB should also clarify that SB 261 does not require disclosure of greenhouse gas emissions separate and in addition to the SB 253 requirements. In this regard, SB 261 reporting should be aligned with reporting requirements under SB 253, especially for companies that have a fiscal year that differs from the calendar year, which represents a significant percentage of US companies. To address a potential misalignment of fiscal versus calendar year, CARB should consider establishing a later reporting date that is 6-9 months after fiscal year-end and that may be past the following calendar year end. The approach should refer to relevant fiscal years rather than prescribing deadlines based on a particular calendar year. In this regard, CMTA recommends CARB also clarify "biennial" in this context.

Notwithstanding the statutory timelines in SB 261, it should be noted that the January 1st timeline established is untenable. If companies are required to commence SB 261 reporting by January 1, 2026, that initial report would need to be based on 2024 data because, under the best of circumstances, it takes companies several months after year-end to gather and analyze data and produce a report that would cover all material climate risks and risk management processes that manifested over the course of the full prior fiscal year. Additionally, in public companies' fiscal Q1, there will nearly always and universally be a significant constraint in staffing and resources in the context of other similar annual report and proxy reporting requirements.

As for an assurance review, CMTA would note there is no statutory requirement for assurance for SB 261 disclosures. The law merely states "if a climate-related financial risk report contains a description of a covered entity's greenhouse gases or voluntary mitigation of greenhouse gases, the state board may consider covered entity's claims if those claims are verified by a third-party independent verifier."[5] The law does not otherwise require assurance be conducted for required disclosures.

Question 11. Should CARB require a standardized reporting year (i.e., 2027, 2029, 2031, etc.), or allow for reporting any time in a two-year period (2026-2027, 2028-2029, etc.)?

CMTA urges CARB to allow flexibility for reporting years to accommodate companies that may have already established reporting time frames for other similar programs or who may not operate on a calendar year, but rather operate on a fiscal year.

[5] SB 261 (Stern, 2023) – Health & Safety Code Section 38533(b)(5)

Question 13. g. For covered entities that already report climate related financial risk, what approaches do entities use?

Across our members, CMTA has observed that companies often use the frameworks to comply that are the most relevant and appropriate information for their reporting context rather than fully aligning with any particular framework(s).

Additionally, we note SB 261 requires a report modeled after the Task Force on Climate-Related Financial Disclosures (TCFD) recommendations or similar required reporting. However, TCFD has since been dissolved and is being incorporated into other voluntary and soon to be mandatory reporting requirements outside the U.S. Nonetheless, the TCFD recommendations required a fair amount of detail over a broad range of topics. Somewhat related, SB 261 is taking a "comply or explain" approach where companies disclose against each aspect of the recommendation or explain why they are not and plans to close gaps. CMTA urges CARB to provide critically needed clarity in its rulemaking on what will be acceptable here and what progress CARB expects to see over time. Additionally, it would be helpful for CARB to also provide additional clarity on the format of this report. Some CMTA members have published TCFD reports but with many gaps against the disclosures due to legal concerns with conflicts with SEC rules. Added clarity for this purpose would be important and useful to reporting entities.

Additional Information

In addition to the above questions, CMTA and members appreciate the opportunity to provide the following additional comments and feedback regarding (i) Scope 3 emissions disclosures; (ii) CARB's enforcement approach; and (iii) verification that GHG emissions are not material to the business.

Overarching all CMTA and its members' feedback on Scope 3 emissions disclosures, we continue to have serious concerns that Scope 3 emissions reporting is unreliable, not science-based, and could have outsized consequences for certain industries. Further, Scope 3 emissions disclosures should not be designed as a one-size-fits-all approach as doing so fails to account for a host of challenges and complexities.

For example, Scope 3 disclosures present exceptionally unique challenges specific to California's aerospace and defense manufacturing companies. Many of these finished manufactured products are not intended for general consumers or everyday use, and these public disclosures become even more problematic in the national security context. There will be difficulties accessing information on the government's use of their products and those supplying the military or other sensitive governmental operations will face even more significant barriers as many of the products or projects these businesses are supplying are classified or otherwise confidential. To the extent they have access to information about the current or anticipated use cases of their products, they are likely prohibited from disclosing that data – or perhaps even acknowledging the product exists.

In terms of enforcement, CMTA urges CARB to use the first reporting year to evaluate disclosures. Companies should not be penalized during their first reporting year except in the event of a failure to report. Such an approach will provide CARB a chance to review the initial disclosures, further assess the state of the market, and issue/refine regulations/guidance as needed. Additionally, CARB should allow companies to ramp up their disclosure processes by providing a "safe harbor" for good faith compliance.

As it relates to the timeline for CARB to complete its rulemaking and in doing so provide clarity and certainty to reporting entities regarding the details and obligations, CMTA appreciates the passage and enactment of SB 219 (Wiener, 2024) that pushed CARB's rulemaking deadline until July 1, 2025. However, even if CARB could complete the rulemaking by this date, which we do not believe is possible, companies are still required to meet original statutory deadlines, including January 1, 2026, for SB 261. This does not give companies sufficient time to prepare a report (6 months), particularly where companies need the certainty and details in the final rulemaking as SB 261 had very little information in the bill itself. This also further justifies CARB not enforcing against companies in the first year of their reporting obligation, except where an entity doesn't report at all.

Along these lines, due dates for emissions reporting each year are left to the rulemaking process by CARB. In this regard, CARB should be mindful that emissions data for the prior year will take considerable time to collect and assure.

CMTA appreciates the opportunity to provide these comments and feedback. If you would like to discuss these issues further, please feel free to reach out to me at (916) 498-3320 or eesquivel@cmta.net or to our consultant Dawn Koepke with McHugh Koepke Padron Government Relations at (916) 606-5309 or dkoepke@mchughgr.com. Thank you.

Sincerely,

Elizabeth Esquivel
Vice President, Government Relations
California Manufacturers and Technology Association